FILED
DEC 24 1979
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1979

No. 79-992

AUSTIN MUTUAL INSURANCE COMPANY,
Appellant,

vs.

WILBUR GUDVANGEN, individually and as guardian ad litem of GAIL GUDVANGEN, a minor,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF MINNESOTA

JURISDICTIONAL STATEMENT

STEVEN J. CAHILL
Attorney for Appellant
512 Center Avenue
P.O. Box 1077
Moorhead, Minnesota 56560

STEVEN J. CAHILL
Cahill, Gunhus, Streed,
Grinnell, Jeffries & Klinger
Counsel of Record
512 Center Avenue
P. O. Box 1077
Moorhead, Minnesota 56560

1979—Northwest Brief Printing Co., 316 Chicago Avenue, Minneapolis 55415—338-5078

INDEX

	Page
Opinion Below	1
Jurisdiction	2
Question Presented	8
Statement of the Case	8
Federal Question is Substantial	10
Conclusion	11

APPENDIX A

Opinion of the Supreme Court of the State of Minnesota, and Opinion on Rehearing of the Supreme Court of the State of Minnesota	A-2
Judgment of Minnesota Supreme Court	A-19
Notice of Appeal	A-20

TABLE OF AUTHORITIES

Cases:

United States Supreme Court:

Allied Structural Steel Co. v. Spanmans, 438 U.S. 234 (1978)	6
Bacon v. Texas, 163 U.S. 207 (1896)	5
Bridge Proprietors v. Hoboken Company, 68 U.S. 116 (1864)	11
Chicago, B. & Q.R. Company v. Nebraska, 170 U.S. 57 (1898)	11
Columbia Ry. v. South Carolina, 261 U.S. 236 (1923)	5
Detroit United Ry. v. Michigan, 242 U.S. 238 (1916)	5
Fleming v. Fleming, 264 U.S. 29 (1924)	5
Home Building & Loan Assn. v. Blaisdell, 290 U.S. 398 (1934)	6

Kryger v. Wilson, 242 U.S. 171 (1916) 5
Murray v. Charleston, 96 U.S. 432 (1877) 4
Tidal Oil v. Flanagan, 263 U.S. 444 (1924) 5, 10
Treigle v. Acme, 297 U.S. 189 (1936) 6
United States Trust Co. v. New Jersey, 431 U.S. 1 (1977) 6
W. B. Worther Co. v. Thomas, 292 U.S. 426 (1934)... 6
Winona, S. & S.P.R. Company v. Plainview, 143 U.S. 371 (1892) 11

United States Constitution:

Art. I, Sec. 10, Cl. 1 .....2, 8

Statutes:

28 U.S.C., Section 1257(2) 2, 3, 6
28 U.S.C., Section 2103 .....2, 3
28 U.S.C., Section 2104 .....2, 4
28 U.S.C., Section 2106 .....2, 4
Minn. Stat., Section 64B.43, Subd. 2 (1975) 7, 9
Minn. Stat., Section 65B.46, Subd. 3 (1975) 7
Minn. Stat., Section 65B.49, Subd. 4 (1975) 6
1977 Minn. Laws, c. 266, s. 2 .....7, 9

IN THE

Supreme Court of the United States

October Term, 1979

No. ———

AUSTIN MUTUAL INSURANCE COMPANY,
Appellant,

vs.

WILBUR GUDVANGEN, individually and as guardian ad litem of GAIL GUDVANGEN, a minor,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF STATE OF MINNESOTA

JURISDICTIONAL STATEMENT

Appellant submits herewith its jurisdictional statement as required by Rule 15 of the Rules of the Supreme Court of the United States.

OPINION BELOW

The opinion of the Supreme Court of Minnesota is reported at 284 NW2d 813, and is printed in Appendix A hereto, infra p. 1. The opinion of the Supreme Court of Minnesota on rehearing is reported in the same opinion.

JURSDICTION

This is an appeal from a decision and judgment, on rehearing, of the Supreme Court of the State of Minnesota. The appeal is taken pursuant to 28 *U.S.C.* Section 1257(2), there being drawn into question the validity of a statute of the State of Minnesota on the grounds that it is repugnant to Article 1, Section 10, Clause 1, the Contract Clause of the Constitution of the United States, and the decision of the Supreme Court of Minnesota was in favor of its validity.

The judgment sought to be reviewed was entered in the Minnesota Supreme Court, on rehearing, on September 26, 1979 (Appendix A, p. 11). The opinion upon which the judgment was entered was rendered on September 12, 1979 (Appendix A, p. 19). The Court's original opinion was dated May 26, 1978, (Appendix A, p. 1). Petition for rehearing was filed June 1, 1978, and the petition was granted on September 4, 1978. Notice of appeal to the Supreme Court of the United States was filed in the office of the Clerk of District Court, Polk County, Minnesota, on October 4, 1979 (Appendix A, p. 20).

The relevant jurisdictional statutes for bringing an appeal from the decision of a state supreme court that violates the Constitution are found in Sections 1257, 2103, 2104 and 2106 of Title 28 of the United States Code. Section 1257 sets forth the basic requirements for appealing a decision of supreme court:

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
> . . .

> By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.
>
> 28 *U.S.C.* Section 1257 (2).

Moreover, if the appeal is improvidently taken the United States Supreme Court may treat it as a petition for certiorari:

> If an appeal to the Supreme Court is improvidently taken from the decision of the highest court of a State, or of a United States court of appeals, in a case where the proper mode of a review is by petition for certiorari, this alone shall not be ground for dismissal; but the papers whereon the appeal was taken shall be regarded and acted on as a petition for writ of certiorari and as if duly presented to the Supreme Court at the time the appeal was taken. Where in such a case there appears to be no reasonable ground for granting a petition for writ of certiorari it shall be competent for the Supreme Court to adjudge to the respondent reasonable damages for his delay, and single or double costs.
>
> 28 *U.S.C.* Section 2103.

Other provisions regarding appellate review by the Sureme Court indicate that the procedure followed is the same for all appeals:

> An appeal to the Supreme Court from a State court shall be taken in the same manner and under the same regulations, and shall have the same effect, as if the judgment or decree appealed from had been rendered in a court of the United States.

28*U.S.C.* Section 2104.

The United States Supreme Courts' authority to make a determination in a case, brought to it upon appeal from a state court, is found in Section 2106:

> The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances.
>
> 28 *U.S.C.* Section 2106.

An appeal from the highest court of a state on the grounds that it has impaired the obligation of contract presents a federal question.

> The true test is not whether the record exhibits an express statement that a Federal question was presented, but whether such a question was decided, and decided adversely to the Federal right. Everywhere in our decisions it has been held that we may review the judgments of a State court when the determination or judgment of that court could not have been given without deciding upon a right or authority claimed to exist under the Constitution, laws, or treaties of the United States, and deciding against the right.
>
> *Murray v. Charleston,* 96 U.S. 432, 442 (1877).

The Contract Clause does not protect against all impairments of the obligation of contract. The clause only protects contracts against legislative impairment and is

not applicable to judicial impairment. *Fleming v. Fleming,* 264 U.S. 29 (1924); *Tidal Oil Co. v. Flanagan,* 263 U.S. 444 (1924); *Kryger v. Wilson,* 242 U.S. 171 (1916); and *Detroit United Ry. v. Michigan,* 242 U.S. 238 (1916). In other words, the state courts' judgment must be based at least in part, upon some subsequent statute that has impaired the obligation of a contract entered into under preexisting law:

> If . . . the judgment, although in effect impairing the obligation of the contract, nevertheless proceeds upon reasons apart from and without giving effect to the statute, this Court is without jurisdiction to review it. *Bacon v. Texas,* 163 U.S. 207, 216, (1896) wherein the doctrine is stated as follows:
>
> "Where the Federal question upon which the jurisdiction of this court is based grows out of an alleged impairment of the obligation of a contract, it is now definitely settled that the contract can only be impaired within the meaning of this clause in the Constitution, and so as to give this court jurisdiction on writ of error to a state court, by some subsequent statute of the State which has been upheld or effect given it by the state court. [Citations omitted.] If the judgment of the state court gives no effect to the subsequent law of the State, and the state court decides the case upon grounds independent of that law, a case is not made for review by this court upon any ground of the impairment of a contract."
>
> *Columbia Ry. v. South Carolina,* 261 U.S. 236, 244 (1923).

This requirement appears to have been clearly met in the present case on the basis of the Minnesota Supreme Court's application of the subsequent amended statute.

In addition, as indicated by 28 *U.S.C.* Section 1257, *supra,* the state Supreme Court's decision must have upheld the validity of the subsequent statute.

The most recent decisions by the United States Supreme Court involving the Contract Clause were brought by direct appeal. *Allied Structural Steel Co. v. Spannaus,* 438 U.S. 234 (1978) (appeal from the United States District Court for the District of Minnesota); *United States Trust Co. v. New Jersey,* 431 U.S. 1 (1977) (appeal from the New Jersey Supreme Court); *Treigle v. Acme Homestead Assn.,* 297 U.S. 189 (1936) (appeal from the Louisiana Supreme Court); *W. B. Worther Co. v. Thomas,* 292 U.S. 426 (1934) (same); and *Home Building & Loan Assn. v. Blaisdell,* 290 U.S. 398 (1934) (appeal from the Minnesota Supreme Court). Clearly, a direct appeal lies from a decision by a state supreme court that constitutes an impairment of the obligation of contract under the Contract Clause of the Federal Constitution.

In 1974 the Minnesota Legislature passed a comprehensive no-fault and uninsured motorist act, Laws 1974, Chapter 408, codified as Sections 65B.41 to 65B.71, effective January 1, 1975. Pertinent statutory provisions in effect in 1975 at the time the contract was made were as follows:

Minn. Stat. 65B.49, Subd. 4:

> (1) No plan of reparation security may be renewed, delivered or issued for delivery, or executed in this state with respect to any motor vehicle registered or principally garaged in this state unless coverage is provided therein or supplemental thereto, in the amounts of $25,000.00 because of injury to or the death of one person in any accident, and

> subject to the said limit for one person, $50,000.00 because of bodily injury to or the death of two or more persons in any one accident, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles and hit and run motor vehicles because of injury.
>
> . . .
>
> (3) "Uninsured motor vehicle" means any motor vehicle for which a plan of reparation security meeting the requirements of Sections 65B.41 to 65B.71 is not in effect.

Minn. Stat. 65B.43, Subd. 2:

> "Motor vehicle" means every vehicle, other than a motorcycle or other vehicle with fewer than four wheels . . .

Minn. Stat. 65B.46, Subd. 3:

> For the purposes of laws 1974, Chapter 408, injuries suffered by a person while on, mounting or alighting from a motorcycle do not arise out of the maintenance or use of a motor vehicle although a motor vehicle is involved in the accident causing the injury.

The 1977 amendment which is claimed to impair the obligation of contract, as the Minnesota Court applied the statute, was enacted as Laws 1977, Chapter 266, Section 2:

> Minnesota Statutes 1976, Section 65B.49, Subdivision 4, is amended to read:
>
> (3) "Uninsured motor vehicle" means any motor vehicle *or motorcycle* for which a plan of reparation security meeting the requirements of Sections 65B.41 to 65B.71 is not in effect.

QUESTION PRESENTED

Whether the Supreme Court of the State of Minnesota gave retroactive effect to the 1977 amendment, passed after the contract was made and after the motor vehicle collision involved in this action, thereby impairing the obligation of contract, contrary to Article I, Secton 10, Clause 1 of the United States Constitution.

STATEMENT OF THE CASE

On July 8, 1975, Austin Mutual and Gudvangen entered into an insurance policy contract which included, inter alia, coverage for insureds injured by uninsured motorists. The policy contract, following closely the then existing Minnesota statutory requirements, did not provide coverage for an insured or member of the insured's family injured by an uninsured motorist, where the insured was a passenger on an uninsured motorcycle. Gail Gudvangen, daughter of plaintiff below, was injured on August 17, 1975, while a passenger on a non-owned, uninsured motorcycle. The motorcycle was struck by an uninsured automobile. Gudvangen brought suit in the District Court, Seventh Judicial District, Polk County, Minnesota, for a declaratory judgment that Austin Mutual was obligated to extend uninsured motorist coverage, alleging that either the policy itself provided such coverage, or if it did not, statutes in effect on the date of the accident required that such coverage be extended. The facts were stipulated to by the parties, and submitted to the Court upon cross motions for summary judgment. The District Court granted summary judgment in favor of Austin Mutual, and Gudvangen appealed to the Minnesota Supreme Court.

In reversing the trial court, the Supreme Court agreed with Austin Mutual's contention that the policy itself did not provide coverage to Gail Gudvangen. The Court then turned to the question of whether statutes in effect at the time of the accident required that such coverage be afforded, without regard to the language of the policy. On that issue the Court said:

> Minn. St. 65B.43 subd. 2 appears to exclude motorcycles from this coverage. An examination of the context, legislative history and subsequent amendatory acts reveals, however, that the legislature did not intend to reduce uninsured motorist coverage by allowing motorcycles to be excluded (Appendix A, p. 9).

The Court then cited the 1977 amendment, Laws 1977, c. 266, s. 2, *supra,* which added the words "or motorcycle" to the definition of an uninsured motor vehicle.

The 1977 amendment was neither briefed nor argued by counsel in the first hearing before the Minnesota Supreme Court. The federal question sought to be reviewed herein was first raised by Appellant Austin Mutual in its petition for rehearing, the Minnesota Supreme Court itself having raised the issue in its frst opinion of May 26, 1978, by applyng the 1977 amendment to the 1975 contract and motor vehicle accident.

Rehearing was granted on September 4, 1978, and in its majority opinion on rehearing, a dissent having been filed by Justices Otis and Peterson, the Court held:

> The 1977 amendments to no-fault added nothing to change the law, therefore, but reworded and clarified the statutes to comply with what the law already was as interpreted by earlier decisions of

this Court. Thus, there is really no question of retroactivity to be decided. (Appendix A, p. 12).

The Court thereby considered and rejected appellant's contention that application of the 1977 statute constitutes an unconstitutional impairment of contract.

An appeal resting upon an impairment of the obligation of contract must have been considered in the court below. Because of the nature of an argument grounded upon the Contract Clause, sufficient consideration by the lower court is found where the issue has been raised on a petition for rehearing:

> The question is such cases could not well be raised until the handing down of the opinion indicating that the objectionable judgment was to follow. This act was intended to secure to the defeated party the right to raise the question here if the state court denied the petition for rehearing without opinion.
>
> *Tidal Oil Co. v. Flanagan*, 263 U.S. 444, 455 (1924).

FEDERAL QUESTION IS SUBSTANTIAL

The questions presented in this appeal are substantial not only to the litigants, but undoubtedly to many other persons within the State of Minnesota involved in similar fact situations arising between the effective date of the no-fault act, January 1, 1975, and the effective date of the 1977 amendment. The federal constitution guarantees to all persons that no state may impair the obligation of their contracts by legislative acts. Appellant claims, therefore, that the State of Minnesota through a legislative act as applied by the Minnesota Supreme

Court, has deprived it of a substantial federal right guaranteed by the United States Constitution.

A claim made in a state court that a state statute is invalid because it impairs the obligation of contract presents a substantial federal question. *Bridge Proprietors v. Hoboken Company,* 68 U.S. 116 (1864); *Winona, S. & S.P.R. Company v. Plainview,* 143 U.S. 371 (1892); *Chicago, B. & Q.R. Company v. Nebraska,* 170 U.S. 57 (1898).

CONCLUSION

Appellant submits that this appeal brings before the Court a substantial federal question which requires plenary consideration, with briefs on the merits and oral argument for its resolution.

December 21, 1979.

Respectfully submitted,

Steven J. Cahill
Counsel for Appellant
512 Center Avenue
P. O. Box 1077
Moorhead, Minnesota 56560

APPENDIX A

No. 156 Polk County Yetka, J.

WILBUR GUDVANGEN, Individually, and as Guardian Ad Litem of GAIL GUDVANGEN, a Minor,
Appellant,

vs.

AUSTIN MUTUAL INSURANCE COMPANY,
Respondent.

48045

Endorsed
Filed May 26, 1978
John McCarthy, Clerk
Minnesota Supreme Court

SYLLABUS

1. An automobile insured by an insurance company in receivership is an uninsured motor vehicle for the purposes of Minn. St. 65B.49, subd. 4.

2. Minn. St. 1976, §65B.49, subd. 4, required coverage for accidents involving uninsured motorcycles as well as uninsured automobiles.

Reversed.

Heard before Todd, Yetka, and Scott, JJ., and considered and decided by the court en banc.

OPINION

YETKA, Justice.

Plaintiff is appealing from an order of the Polk County District Court dismissing his complaint for declaratory relief. The district court determined that the uninsured motorist provision of the automobile liability insurance policy issued to plaintiff did not provide coverage for his minor daughter who was a passenger on a nonowned, uninsured motorcycle which was involved in a collision with an automobile. We reverse.

The case was submitted to the district court on the following stipulated facts:

"I.

"On or about the 17th day of August, 1975, at approximately 2:30 p.m., plaintiff's minor, Gail Gudvangen, was riding as a passenger on a motorcycle being driven by Millia Belen on a gravel road in Garfield Township, approximatel 1 1/2 miles west of the City of Fertile, State of Minnesota.

"II.

"At said time and place, one Carline Julia Berhow was operating a motorcycle owned by Jonathan C. Benesh and was proceeding in the same direction as the motorcycle on which plaintiff's minor was a passenger.

"III.

"Further, at said time and place, one Kenneth Loren Murray was operating an automobile on said

road and was proceeding in the opposite direction of the motorcycles referred to in paragraphs one and two.

"IV.

"A collision occurred at such time and place involving the motorcycle on which plaintiff's minor was a passenger and the automobile being operated by Kenneth Loren Murray.

"V.

"As a result of said collision, plaintiff's minor has sustained physical injuries of an amount undetermined at this time.

"VI.

"The motorcycle driven by Millia Belen was uninsured on the 17th day of August, 1975.

"VII.

"The motorcycle driven by Carline Julia Berhow was uninsured on the 17th day of August, 1975.

"VIII.

"The automobile operated by Kenneth Loren Murray was on said date insured by Manchester Insurance Company, which company is presently in receivership, and may, for purposes of submission of the issue here presented, but for no other purpose, be considered by the Court to be free of fault for the accident.

"IX.

"Plaintiff and plaintiffs minor informed defendant of the accident and injury and have asserted a claim against defendant.

"X.

"That on the 17th day of August, 1975, the plaintiff was the named insured of defendant's automobile insurance policy # 10-54-87, a copy of which is hereto attached as Exhibit A and incorporated by reference. Under the terms of the policy, a 1966 Chevrolet 4-door station wagon and a 1971 GMC pickup truck were covered, providing for, among other items, uninsured motorists coverage in the amount of $50,000.00 on each vehicle for injury to any one person.

"XI.

"Gail Gudvangen is the daughter of the plaintiff and was a resident of the plaintiff's household at the time and place of the accident which is the subject of this lawsuit.

"XII.

"The issue to be tried in this case is whether plaintiff is entitled to uninsured motirists protection under the terms of the policy and pursuant to Minnesota Statutes."[1]

[1]At oral argument, the parties appeared to retreat from their stipulation that the automobile was without fault. For the purposes of this opinion we treat the stipulation as abandoned.

The parties raise the following issues on appeal:

1. Did the policy issued by defendant provide coverage to plaintiff where his insured would be legally entitled to recover damages against the owner or operator of an uninsured motorcycle?

2. Did Minn. St. 1976, § 65B.49, subd. 4, require an insurer to provide uninsured motorist coverage for accidents involving damages caused by owners or operators of uninsured motorcycles?

Defendant concedes that the plaintiff would have a valid claim against it if it were found that the automobile was at fault in the accident. The automobile's insurer is in recevership, and thus the automobile is uninsured for the purposes of Minn. St. 65B.49, subd. 4 (3), because no plan of reparation security is in effect. Nothing in the legislative history of L. 1974, c. 408, the No-Fault Law, evidences an intent to alter the principles of Northland Insurance Co. v. West, 294 Minn. 368, 201 N.W. 2d 133 (1972). and Nygaard v. State Farm Mutual Insurance Co. 301 Minn. 10, 221 N.W. 2d 151 (1974). These cases held that no geographical limits could be placed upon uninsured motorist coverage because persons and not vehicles were protected. Similarly, under the present statute coverage is available to an insured without regard to location.

larly, under the present statute coverage is available to

If it had been determined that the automobile was at fault in the accident, then our inquiry could end. This declaratory judgment action was brought, however, prior to any fact determination either in litigation or arbitration. The issue directly presented to the trial court

through the stipulated facts is whether the insured is entitled to recover under the policy if only the motorcycle was at fault.[2]

(1) Uninsured motorist coverage in the policy.

The policy at issue provides, in relevant part, the following protection:

> "To pay all sums which the insured or his legal representatives shall be legally entitled to recover as damages from the owner or operator of an uninsured automobile * * * sustained by the insured, caused by accident and arising out of the ownership, maintenance or use of such uninsured automobile * * *. 'Uninsured automobile' is defined as:
>
> (a) An automoble or trailer with respect to the ownership, maintenance, or use of which there is, in at least the amount specified by the financial responsibility law of the state in which the insured automobile is principally garaged, no bodily injury, liability bond or insurance policy applicable at the time of the accident with respect to any person or organization legally responsible for the use of such automobile * * *."

The section providing this coverage does not itself further define automobile but it incorporates other definitions by reference. The general liability provisions of the

[2]We could remand this case for a determination of the automobile liability and avoid deciding this issue. We decline to do so because this course would involve the possibility of yet another appeal. In light of the apparent abandonment of the stipulation regarding the automobile, we choose to consider all issues in this appeal.

policy incorporated into the uninsured motorist protection by reference contain definitions of various types of automobile including the following:

> " 'private passenger automobile' means a four wheel private passenger, station wagon or jeep type automobile;
>
> " 'farm automobile' means an automobile of the truck type * * *;
>
> " 'utility automobile' means an automobile * * * of the pick-up body, sedan delivery or panel truck type * * *."

The term "automobile," unqualified, is not defined in the policy. The term "motor vehicle," defined to expressly exclude motorcycles, is not used in the uninsured motorist provision of the policy.

Following the principles of Taulelle v. Allstate Insurance Co. 296 Minn. 247, 207 N.W. 2d 736 (1973), the policy must be interpreted so as to exclude coverage for accidents caused by uninsured motorcycles. In Taulelle, were recognized that "automobile" does not usually describe a motorcycle, but held that the policy definition of an automobile as a "land motor vehicle' 'was broad enough to include motorcycles. The present policy has no such broad definition. In the present case, the definitions of the various types of automobile exclude motorcycles from their scope. Like the present case, the Taulelle case involved an insured who was a passenger on a nonowned, uninsured motorcycle. Unlike cases which have been decided in other jurisdictions, in Taulelle this court did not determine that the statute itself required

such coverage, but that the policy itself provided coverage.[3] Although Nygaard v. State Farm Mutual Insurance Co. *supra,* settled this question under Minn. St. 1973, § 65B.22, changes in the law regarding uninsured motorist protection require a reexamination of the issue presented. Unlike Taulelle v. Allstate Insurance Co. *supra,* and Nygaard v. State Farm Mutual Ins. Co. *supra,* the present issue does not depend solely upon the location of the insured, but depends additionally upon who was at fault in the accident. If the automobile was free from fault, then the policy expressly provides no coverage and only if the statute required insurance against uninsured motorcycles would plaintiff be entitled to recover.

(2) Coverage under Minn. St. 65B.49, subd. 4.

The Minnesota No-Fault Law effected major changes in automobile liability insurance law. Among other things, it made liability insurance mandatory for all automobiles licensed in this state and made first party, so-called no-fault coverage mandatory to reimburse certain basic losses.[4] In addition to requiring liability and economic loss coverage, the No-Fault Law continues the requirement of Minn. St. 1973, § 65B.22 that all automobile liability policies issued in Minnesota contain unnsured motorist coverage.[5]

At the time relevant to the present accident Minn. St. 65B.49, subd. 4, provided in part:

[3]See, e.g., Chakalos v. Phoenix Insurance Co., 110 N. H. 321, 267 A. 2d 573 (1970), and cases collected in Annotation, 65 A. L. R. 3d 851, § 3(a), and Northland Insurance Co. v. West, 294 Minn. 368, 201 N. W. 2d 133 (1972)

[4]Minn. St. 65B.48.

[5]The effect of continuing required uninsured motorist coverage as a part of *required* automobile liability policies is to expand the number of persons who will in fact be protected against uninsured motorists.

"(1) On and after January 1, 1975, no plan of reparation security may be renewed, delivered or issued for delivery, or executed in this state with respect to any motor vehicle registered or principally garaged in this state unless coverage is provided therein or supplemental thereto, in the amounts of $25,000 because of injury to or the death of one person in any accident, and subject to the said limit for one person, $50,000 because of bodily injury to or the death of two or more persons in any one accident, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles and hit-and-run motor vehicles because of injury.

* * * * *

"(3) 'Uninsured motor vehicle' means any motor vehicle for which a plan of reparation security meeting the requirements of Laws 1974, Chapter 408 is not in effect."

Minn. St. 65B.43, subd. 2, appears to exclude motorcycles from this coverage.[6] An examination of the context, legislative history, and subsequent amendatory acts reveals, however, that the legislature did not intend to reduce uninsured motorist coverage by allowing motorcycles to be excluded. The apparent reason for excluding motorcycles from mandatory no-fault insurance was the prohibitive cost to the motorcycle operator. The no-

[6]Minn. St. 65B.43, subd. 2, provides that the following definition applies to the No-Fault Act unless the context otherwise requires: " 'Motor vehicle' means every vehicle other than a motorcycle or other vehicle with fewer than four wheels * * *."

fault law still requires motorcycle operators to maintain liability insurance. Minn. St. 65B.48, subd. 5. Laws 1977, c. 266, s. 2, amended the provisions of Minn. St. 65B-49, subd. 3, to read as follows:

> "Uninsured motor vehicle means any motor vehicle *or motorcycle* for which a plan of reparation security meeting the requirements of Sections 65B.-41 to 65B.71 is not in effect." (Italics supplied.)

While adoption of an amendment expanding a statutory definition raises a presumption that the legislature intended to change preexisting law, that presumption may be rebutted. State, by Spannaus v. Coin Wholesalers, Inc. — Minn. —, —, 250 N.W. 2d 583, 587 (1976). In the present case, an examination of the amending legislation clearly rebuts the presumption. Laws 1977, c. 266, originally Senate File 1338, contains the following title:

> "An act relating to automobile insurance; *clarifying certain ambiguous provisions in the Minnesota no-fault automobile insurance act;* amending Minnesota Statutes 1976, Sections 65B.44, Subdivision 3; 65B.49, Subdivisions 4 and 6; 65B.51, Subdivision 1; and 65B.53, Subdivision 1." (Italics supplied.)[7]

The legislature has expressly stated that the addition of the term "motorcycle" to Minn. St. 65B.49 is a clarification and thus we must infer that the limited definition

[7]The title of an act is evidence of legislative intent. State v. Northwestern States Portland Cement Co., 258 Minn. 162, 103 N.W. 2d 225 (1960).

of motor vehicle in Minn. St. 65B.43, subd. 2, was never intended to apply to uninsured motorist coverage.

Because we find that the legislature required insurance against uninsured motorcycles we hold that the limitation of that coverage in the plaintiff's insurance policies with defendant is void. The plaintiff is covered under defendant's policy whether the uninsured automobile or the uninsured motorcycle was at fault.

Reversed.

No. 156 (1978)

Yetka, J.
Dissenting, Otis, J.
Peterson, J.

Endorsed
Filed September 7, 1979
John McCarthy, Clerk
Minnesota Supreme Court

48045

(Names of Parties)

Heard before Todd, Yetka, and Scott, JJ., and reheard and decided by the court en banc.

OPINION ON REHEARING

YETKA, Justice.

By way of further explanation for our earlier decision, we think it clear that in adopting the concept of no-fault insurance into the Minnesota statutes, the legislature intended no change in the law insofar as uninsured

motorist insurance protection is concerned. The statutes dealing with uninsured motorist insurance were intended to be incorporated intact. Since decisions of this court prior to no fault, cited in the main opinion, make it clear that the protection of the uninsured motorist statutes applied to persons and not vehicles, appellant would be covered.

The 1977 amendments to no fault added nothing to change the law, therefore, but reworded and clarified the statutes to comply with what the law already was as interpreted by earlier decisions of this court. Thus, there is really no question of retroactivity to be decided.

With this explanation, our earlier decision is affirmed.
OTIS, Justice (dissenting).

Following en banc reargument I am persuaded the trial court should be affirmed in this appeal.

The plaintiff Wilbur Gudvangen has brought this action against the defendant Austin Mutual, the insuror of plaintiff and his family, to recover uninsured motorist benefits under a policy which covers plaintiff's two automobiles, neither of which was involved in this accident. Gail Gudvangen, plaintiff's daughter, was injured on August 17, 1975, while riding as a passenger on an uninsured motorcycle which collided with an uninsured automobile and another uninsured motorcycle.

The policy issued by Austin to plaintiff, as conceded by the majority, excludes coverage for accidents caused by uninsured motorcycles. The narrow question then is whether Chapter 408 of the Laws of 1974 mandates coverage where injuries are inflicted by an uninsured motorcycle prior to the adoption on May 25, 1977, of Chapter 266, Laws of 1977.

At the time of this accident the applicable statutes were set forth in Chapter 408 of the Laws of 1974, codified as Minn. St. 65B.43, subds. 1 and 2, (1974) and Minn. St. 65B.49, subd. 4, (1), (2) and (3) (1974) which provide as follows:

> §65B.43 "Subdivision 1. The following words and phrases, shall, for the purpose of Laws 1974, Chapter 408, have the meanings ascribed to them, except where the context clearly indicates a different meaning.
>
> "Subd. 2. 'Motor vehicle' means every vehicle, *other than a motorcycle* or other vehicle with fewer than four wheels, which (a) is required to be registered pursuant to chapter 168, (b) is designed to be self-propelled by an engine or motor for use primarily upon public roads, highways or streets in the transportation of persons or property, or (c) is a trailer, when connected to or being towed by a motor vehicle." (Italics supplied.)
>
> §65B.49 "Subd. 4. Uninsured or hit-and-run motor vehicle coverage. (1) On and after January 1, 1975, no plan of reparation security may be renewed, delivered or issued for delivery, or executed in this state with respect to any motor vehicle registered or principally garaged in this state unless coverage is provided therein or supplemental thereto, in the amounts of $25,000 because of injury to or the death of one person in any accident, and subject to the said limit for one person, $50,000 because of bodily injury to or the death of two or

more persons in any one accident, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles and hit-and-run motor vehicles because of injury.

"(2) Every owner of a motor vehicle registered or principally garaged in this state shall maintain uninsured motor vehicle coverage as provided in this subdivison.

"(3) 'Uninsured motor vehicle' means any motor vehicle for which a plan of reparation security meeting the requirements of Laws 1974, Chapter 408 is not in effect."

These statutes included in one chapter the provisions for so-called "no-fault" coverage and "uninsured motor vehicle" coverage, incorporating by reference as an uninsured motor vehicle the no-fault definition which explicitly excluded motorcycles. Accordingly, by the terms of the statute, on the date of this accident, liability insurance policies were not required to include uninsured motorist coverage where the injury was inflicted by the operation of a motorcycle.

For reasons which do not appear in the record and are not apparent otherwise, a subsequent legislature in 1977 adopted Chapter 266 changing Minn. St. 65B.49, subd. 4, (3), to add the words "or motorcycle" so as to read as follows:

" 'Uninsured motor vehicle' means any motor vehicle or motorcycle for which a plan of reparation security meeting the requirements of sections 65B.-41 to 65B.71 is not in effect."

The preamble to that chapter described it as "An Act relating to automobile insurance; clarifying certain ambiguous provisions in the Minnesota no-fault automobile insurance act." I submit that whatever may have been the intention of the 1974 legislature the explicit language of Chapter 408 could not have been clearer or less ambiguous. I have the greatest difficulty in accepting the principle that where a specifically defined vehicle is expressly excluded in one law, a subsequent law merely clarifies the intent of a prior legislature by explicitly including vehicles it previously excluded.

In any case, unless we are to overrule a long line of cases which have approved a fundamental rule of construction for the last 100 years, the 1977 legislature had no authority to construe the intent of the 1974 legislature. In Bingham v. Supervisors of Winona Co. 8 Minn. 390, 398, (441, 448) (1878) we said:

"* * * It is only the intent of the legislature which enacts a statute that is to govern courts in the construction thereof. The opinion of a subsequent legislature upon the meaning of a statute, is entitled to no more weight than that of the same men in a private capacity."

Subsequently we approved the rule stated in the Bingham case in Anderson v. Firle, 174 Minn. 333, 337, 219 N.W. 284, 285 (1928) where we stated: "We recognized the rule that one legislature is not the interpreter of the laws enacted by a prior legislature."

More recently in Martinco v. Hastings, 265 Minn. 490, 497, 122 N.W. 2d 631, 638 (1963) we noted: "If there is to be a change in the statutes, it must come from the

legislature, for the courts cannot supply that which the legislature purposely omits or inadvertently overlooks."

Whether the failure to require uninsured motorist coverage for injuries inflicted by a motorcycle was intentional or inadvertent, the liability carriers had a right to rely on the express language of the statute as long as it remained unamended. To that extent justice and equity clearly conferred on liability carriers a "vested interest" in lifting their exposure to only those risks which were expressly covered in their policies or were mandated by statute. There can be no dispute but that neither the law nor the policy provided coverage for accidents caused by motorcycles on the date of the accident giving rise to this litigation.

The majority opinion on rehearing refers to the rule that protection under the uninsured motorist statute applies to "persons" and not "vehicles." With deference to the majority, I submit that the broad language of that rule has no bearing whatever on the facts of this case. The cases which have adopted and applied that rule have held only that persons who are insured under an automobile liability policy need not be occupants of the car described in the policy to enjoy uninsured motorist coverage. All we have held in this regard is that the named insured and members of his household are entitled to uninsured motorist benefits whether they are injured while riding in the vehicle described in the insured's policy or whether they are pedestrians or riding in any other vehcile, either an automobile or a motorcycle. None of these cases requires uninsured motorist coverage where the vehicle which causes the injury is expressly excluded by the policy and is a vehicle as to which coverage is not mandated by statute.

Four cases are cited for the proposition that "uninsured motorist protection is not coverage for vehicles but for persons": Northland Insurance Co. v. West, 294 Minn. 368, 201 N.W. 2d 133 (1972); Taulelle v. Allstate Insurance Co., 296 Minn. 247, 207 N.W. 2d 736 (1973); Nygaard v. State Farm Mutual Auto. Ins. Co. 301 Minn. 10, 221 N.W. 2d 151 (1974); and Oberstar v. State Farm Mutual Auto. Ins. Co. 301 Minn. 406, 222 N.W. 2d 557 (1974).

In Northland the injured party was struck by an uninsured automobile while riding on a motorcycle. Although the motorcycle was not the vehicle named in the injured party's insurance policy covering a different vehicle, we held that the insurance on the injured party's automobile gave him uninsured motorist coverage when struck by an uninsured car whether he was riding in his insured vehicle or in any other vehicle.

The Taulelle case simply held that by the express terms of his policy the insured who was injured while riding a motorcycle was riding an insured automobile. We relied heavily on the fact that motorcycles were not explicitly excluded from coverage. In contrast to the facts in Taulelle, it is conceded that the policy issued to plaintiff excludes coverage unless it is mandated by statute.

In Nygaard we dealt with two wholly unrelated accidents governed by the same rule of law. There we held that where the injured parties were on motorcycles struck by an uninsured automobile, policies of insurance under which the injured parties were otherwise covered could not exclude uninsured motorist benefits simply because the injured parties were occupying motorcycles which were not covered by the insured' policy. Again the ques-

tion for decision was not whether the insuror could exclude injuries inflicted by an uninsured motorcycle, but only whether injuries inflicted by an uninsured automobile could be excluded because the injured parties were not riding in the automobile which the policy expressly covered.

Finally, in Oberstar, we held that by the express definitions in the policy itself, colliding snowmobiles were automobiles for purposes of affording uninsured motorist coverage to persons included within automobile liability policies as long as the snowmobiles were being operated on a public road.

The language in our cases to the effect that uninsured motorist coverage is protection for persons and not for vehicles means only one thing, that to enjoy the benefits of uninsured motorist coverage it is not necessary that injured parties be riding or occupying the vehicles which are described in their liability policies. The rule is narrowly applied in all of these cases to provide protection wherever an insured is injured by an uninsured vehicle as that vehicle is defined either by statute or in a particular policy. But to hold that this principle gives coverage where neither the policy nor the law requires it is, in my opinion, a totally unwarranted deprivation of rights for which defendant has contracted. It denies defendant a valid defense which was vested at the time of this accident. See, Halverson v. Rolvaag, 274 Minn. 273, 275, 143 N.W. 2d 239, 241 (1966). Accordingly I would affirm the trial court.

PETERSON, Justice (dissenting).

I join in the dissent of Mr. Justice Otis.

STATE OF MINNESOTA, SUPREME COURT

Wilbur Gudvangen, Individually, and as Guardian, Ad Litem of Gail Gudvangen, a Minor,

Appellant,

vs.

Austin Mutual Insurance Company,

Respondent.

48045

Pursuant to an order of Court heretofore duly made and entered in this cause on May 26, 1979, it is determined and adjudged that the order of the Court below, herein appealed from, to-wit, of the District Court within and for the County of Polk be and the same hereby is in all things reversed and upon the Opinion on Rehearing dated September 7, 1979, this decision is affirmed.

And it is further determined and adjudged that appellant herein, do have and recover of respondent herein the sum and amount of Three Hundred Forty-Eight and 08/100 DOLLARS, ($348.08) costs and disbursements in this cause in this Court, and that execution may be issued for the enforcement thereof.

Dated and signed September 26, 1979.

BY THE COURT

Attest:

/s/ JOHN McCARTHY

Clerk

STATE OF MINNESOTA — IN DISTRICT COURT
County of Polk — Ninth Judicial District

Wilbur Gudvangen, Individually, and as Guardian Ad Litem of Gail Gudvangen, a minor,

Plaintiff-Appellant,

vs.

Austin Mutual Insurance Company,

Defendant-Respondent.

Notice of Appeal to the Supreme Court of the United States

#27292

Notice is hereby given that Austin Mutual Insurance company, the Defendant above-named, hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of Minnesota entered in this action on September 26, 1979.

This appeal is taken pursuant to the United States Code Title 28, Section 1257(2).

Dated this 4th day of October, 1979

CAHILL, GUNHUS, STREED, GRINNELL, JEFFRIES & KLINGER
By /s/ STEVEN J. CAHILL
Attorneys for Defendant
512 Center Avenue, P.O. Box 1077
Moorhead, Minnesota 56560
(218) 236-6462